



JUN - 1 2004

Application No. 09/528,989
Attorney Docket No. 9676-292

...ENTER 1600 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jean-Marie VOGEL et al. Confirmation No.: 6000
Application No: 09/528,989 Group Art Unit: 1617
Filed: March 20, 2000 Examiner: L. WELLS
For: INJECTABLE AND SWELLABLE Attorney Docket No.: 9676-292
MICROSPHERES FOR TISSUE
BULKING

RESPONSE TO FINAL OFFICE ACTION

File processed

COMMISSIONER FOR PATENTS
PO BOX 1450
Mail Stop AF
Alexandria, Virginia 22313-1450

Sir:

In response to the final Office Action dated November 26, 2003, Applicants submit the following amendment and remarks for entry into the file of the above-identified application. Applicants also submit herewith Terminal Disclaimer, a Notice of Appeal and a Petition for Extension of Time, with provision for the required fee, to extend the period of response to and including May 26, 2003.

Claim amendment starts on page 2.

Remarks starts on page 3.

A complete list of all claims and their status is in the Appendix, which starts on page 7.

Applicants further submit that, Hubbard not only fails to suggest the present invention, but actually teaches away from it by emphasizing the use of particles made from ceramic and aluminum materials, which cannot be swellable, hydrophilic, or a polymer, as required by the present invention. In other words, one of ordinary skill in the art, based on the disclosure in Hubbard, *i.e.*, solid rigid particles, would look away from the direction of the present invention, *i.e.*, soft swellable microspheres.

For the foregoing reasons, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) should be withdrawn.

Conclusion

Applicants respectfully submit that, in view of the amendment and remarks made herein, all pending claims are now in condition for allowance, early notice of which is earnestly solicited. Should the Examiner disagree, a personal or telephonic interview is respectfully requested to resolve any remaining issues in this application.

No fee is believed to be due for the submission of this response, except the fee for the Petition for Extension of Time Submitted herein. Should any additional fee be required, however, please charge such fee to Jones Day Deposit Account No. 503013.

Respectfully submitted,

Date: May 26, 2004


B. Gary Zhang

(Reg. No. 47,331)

For: Anthony M. Insogna

(Reg. No. 35,203)

JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939

Enclosure